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P R O C E E D I N G S

THE COURT: Good afternoon, ladies and gentlemen. We are about to begin the Horowitz case.

Before we do so, I'd indicated to you, and you do have note pads and the appropriate utensil to write on, those note pads, you may use them as you see fit. You don't have to take notes unless you want to. But if you do decide to take notes, be sure that your note-taking doesn't interfere with your ability to observe the witness or listen to the lawyers and be aware of what's going on.

And, as I told you before, your notes are yours, and you're not to share them with anybody. They are confidential, and you can either take them with you each time you leave or you can leave them on your chair, and nobody's going to come and read them.

Also, you may note any questions on your paper that you might have for a particular witness. When the lawyers are through asking questions of a witness, if any of you have any questions, you can write the question out, give it to me, and I may ask it. I say "may," because it depends if it's relevant and if it's admissible, leads to admissible evidence.

If I think that it's improper, I'm not going to ask the question at all. Don'ts be offended, in case your question is not asked. The attorneys can also object to the question, if they want to. They can do that during the course of the trial. That's part of their job, to see that

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just evidence that is relevant to this case and bears on the issues here is admitted.

And so if they think that a particular question is not appropriate or not properly worded, they will object to it. But don't be offended. It's nothing personal at all. It's objected to or not given for some legal reason. Okay?

As I told you before, you're not to talk to the attorneys in any way, shape or form. Don't even ask them the time of day or tell them it's a beautiful day and good morning, or whatever. Just ignore them, except here in court, you pay attention to them.

The way we try a case, in very general terms, is that the plaintiff makes an opening statement. And the reason that the plaintiff goes first -- and I think it was told to you before -- is because the plaintiff has the burden of proof. They have to prove what they say has been done to them. They have to prove their case from A to Z, all of it, unless the defense, for some reason, concedes a point. I don't know whether that will occur or not. It may.

But anyway, they have to prove their case, so they can go first. The attorney makes an opening statement. That opening statement primarily is to tell you what they are going to prove. Then you can make note of it. But remember what the attorney says. At any time, true to every attorney here, what they say is not evidence unless they take the oath and sit on the witness stand and testify as a witness.

So you listen to what they say and you see if it makes sense. And particularly with respect to the opening

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statements, you note what Ms. Chaber says and what she's going to prove, and then make a mental note of it, or write it down. And if she doesn't do it, she's failed in that

regard. And I assume that whatever she says to you, she thinks and intends to and hopes to prove to you.

The same will be true with the defense. They can make an opening statement when she's through, or they can wait until she's all through with her case, and then they can make their opening statement. That's up to them to decide.

Well, anyway, after the opening statements are made, the witnesses come forth, and the plaintiffs' witnesses primarily will go first. Maybe we will call a witness out of order, if it's necessary to accommodate a witness because of some time reason or because the witness has some other kind of an obligation. So we may take them out of order. If that occurs, why, we will let you know.

But whoever calls a witness asks the witness the questions to begin with, and then the other side may cross-examine the witness, and there may be redirect examination, so it goes back and forth a bit.

And when they are all through, as I said, then it's your opportunity, but you have to write your question out, because you're not lawyers, and we don't expect you to word the question right, but you may say, "There's something missing here," or "I didn't hear it," or something, so you want to write it out. That's fine. And that's why we do that, so you know as much as there is going to be available from that particular witness.

There's also going to be what we call demonstrative evidence, and some of that will even start with the opening statement. There will be some slides, some photographs, some written documents, and perhaps other things, models. I don't know the full extent of it. But that's all demonstrative evidence. And, of course, if it's evidence, then you consider it. But whatever, as I said before, whatever the attorney says in this matter by any attorney is not evidence.

When all of the witnesses are through testifying and all of the demonstrative evidence is submitted to you, you know, you may look at a document, it will be passed around, or you may get a glancing view of it, so to speak. You can take it with you when you deliberate in the jury room, examine it up and down, back and forth, round and round, any way you want to. But when all of that evidence is in, the attorneys are going to argue.

Again, they are going to be summing up their case, and we call it argument. Plaintiff goes first, then the defense comes and the plaintiff gets to close because again, plaintiff has the burden of proof. So they go twice in closing.

When that is done, generally I will instruct you with respect to all the law that applies to this case, if I haven't previously instructed you about the law. You take those written instructions with you. You can look at them at your leisure, when you're all together. The same is true with respect to the evidence.

Then, for the first time, you can discuss the case, the witnesses, the evidence, what you think of it, what probative value it has, what it means, put it all together and come up with a verdict. And you know, that's why you're here, is to try to arrive at a verdict if you can do so based on the facts, based on the law, and in good conscience. That's why we want you to decide this case. It's a heavy responsibility. But remember, keep your common

sense about you.
And during the course of this trial, day after day after day, as I told you before, will generally start at 9:00 o'clock, go to 12:00, and in between we will have a recess, about fifteen minutes. Again, you can't talk to anybody about the case during that recess.
If, for some reason, you need a recess before I call it -- I may not call it just exactly in the middle somewhere, I'll call it when they are through with a witness and an appropriate time, so there's an appropriate break, but, if for some reason, you need to go out, you need a drink of water, you need to go to the bathroom, or whatever it is, just raise your hand. And if nobody pays attention, say: Just a minute, and you can tell us what you want. And then we will have a recess for you.
And if you get sleepy, don't. Because we all do at times, you know, after lunch, and it gets quiet in here and warm, and somebody next to you starts breathing heavily, give them a little jog. And if you do it yourself, pinch yourself, because we want you to all pay attention. It will

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happen to all of us. I once had an attorney who went to sleep during the course of the trial, and it was very embarrassing. When I noticed it, why, we declared a recess. But it can happen to anybody. So don't be offended. If you want to go out and wash your face with water, let us know.
Ms. Chaber?
MS. CHABER: Could I have a moment?
THE COURT: Sure.
MS. CHABER: I apologize to the Court, but I don't know where else to put this, and it may block your view a little bit, Your Honor.
THE COURT: That's all right.
I should note that all of the jurors are here and all of the attorneys. I don't know whether any party is here for the defense or not.
MR. OHLEMEYER: I'll introduce them, Your Honor.
MS. CHABER: May it please the Court, Counsel, ladies and gentlemen of the jury.
When you heard the name Lorillard Tobacco Company and you heard that this was a case that involved cancer, you may have been thinking we were talking about something like this.
My client, Milton Horowitz, quit smoking 32 years ago. This is not a case about this end of the cigarette. It's a case about this end of the cigarette. It's a case about the filter, or the predecessor to this Kent filter. Kent with the Micronite filter which, from its inception in 1952 to 1957, contained asbestos.

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Asbestos is what causes mesothelioma. Tobacco does not cause mesothelioma. Tobacco smoking does not cause mesothelioma. Asbestos does. And from 1952 to 1957, there was asbestos in the Kent Micronite filter.
These two defendants, Lorillard and Hollingsworth and Vose, are the only companies who have ever put asbestos in a product that was made and intended to be inhaled directly into your lungs.
They not only put asbestos in the filter, they put what's called Crocidolite asbestos. It looks a little like crocodile, but it's Crocidolite, and it's a type of asbestos. It's called blue asbestos, and the reason it's called blue asbestos is because it's actually blue colored.

It comes from South Africa, and it is considered the most potent, the most poisonous, and the most toxic of all forms of asbestos.

This is a case about the big lie that these companies told the public, told Milton Horowitz in their ads, in their TV advertising. You have to go back to the '50s, TV advertising, $64,000 question, newspapers, magazines and, yes, even medical journals. And they said such things as: Only Kent has the Micronite filter made of pure, dust-free, and completely harmless material. This is from the journal of the American Medical Association.

"Which cigarette gives you the greatest health protection?" Advertising Magazine recognized this campaign as the best hard-sell advertising campaign in the 1950s. They created a demand for what was perceived as health

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protection, and then they went about filling that demand. But the public didn't know that there was asbestos; that the Micronite filter meant asbestos.

And the public in the 1950s, even if they knew that fact, didn't know that asbestos was hazardous. But these defendants did. In 1944, the Journal of the American Medical Association came out with an editorial about environmental cancers, and asbestos was listed as one of the suspected carcinogens.

In 1949, the Journal of the American Medical Association, the same place that they advertised in in the 1950s, in their editorial recognized that asbestos was associated with asbestosis and lung cancer.

The Journal of the American Medical Association's editorial sounded an alarm, an alarm which was ignored by these companies. They manufactured Kent with an asbestos filter, something which had no medical usefulness, something which was not a military product, did not have any military usefulness, and was not for the public good. They acted in conscious disregard of the health and safety of the public, and they did it for one reason and one reason only, and that was to make money.

By the early 1950s, medical science was already seeing tumors of the pleura, which is the lining of the lungs, which is the disease that Milton Horowitz has. Mesothelioma is a tumor of the lining of the lungs. And they were seeing it in conjunction with people who were exposed to asbestos.

What the doctors did not know back then was that it

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was actually a separate disease, something distinct from lung cancer, something different than lung cancer. That took until the 1960s until that was known and accepted that mesothelioma was actually a separate disease from lung cancer.

In 1953, Lorillard hired the editor of the Journal of the American Medical Association, Dr. Morris Fishbein. He'd been the editor back in 1949 when that editorial was published about asbestos and cancer. And they paid him more than $25,000 a year. And the first thing that they had Dr. Fishbein do was write a book on smoking and health. And Dr. Fishbein, in his chapter on cancer, said it was still an open question as to whether smoking caused cancer, but that it was recognized that asbestos was a cause of lung cancer.

Now, Dr. Parmelli, who's not a medical doctor, but a Ph.D., was the director of research for Lorillard. It was then called the P. Lorillard Company. It's the same company now. And he had changes and edited Dr. Fishbein's book.

And there's a subsequent letter that shows that he put in -- that Parmelli, the director of research at Lorillard, put in a plug for the Micronite filter in this book that Dr. Fishbein was publishing.

Now, to be objective, scientists, when they publish things, are supposed to recognize who has contributed to those publications, because people ought to know who's paying for research that might affect them, and it's something that people ought to know and be able to consider.

MR. BRAKE: Your Honor, I'll object to the

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argumentative nature of this line about what scientists should or should not know. I don't think that's appropriate.

THE COURT: Okay. Let's not speculate or argue, please.

MS. CHABER: And Dr. Fishbein had indeed written: "I am indebted to the P. Lorillard Company for assistance in securing necessary clerical and bibliographic aid in developing this book." And Dr. Parmelli crossed that out.

Well, after this book was published, Lorillard requested reprints of it, sent it around the country. And Lorillard thanked Dr. Fishbein for plugging the Micronite filter, for essentially recommending it, in this book.

Dr. Fishbein was also involved in another project that Lorillard had, which was called the Chicago Throat Doctors study. And what this was, was they sent gift boxes of cigarettes, of Kent with the asbestos Micronite filter, to the doctors in the Chicago area, and they asked them to conduct a very scientific experiment. They asked them to determine whether or not their throat felt better when they smoked Kent, as compared to other cigarettes.

And they wrote in their letter to the doctors that: "We, at Lorillard, are trying to avoid the use of questionable medical claims in advertising. That's why we are coming to you." And in response, they got all sorts of testimonials thanking them for the free cigarettes and saying: Oh, yeah, my throat feels much better.

With the exception of one gentleman, a Dr. Jerome

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Silver who wrote them in May of 1954, that "The other concern that I had is the effect of the asbestos, which is used in the filter. There have been unofficial reports of cases of asbestosis found in people smoking Kents and said to be solely a result of such smoking." Then he goes on to talk about how he liked the Kents.

And then at the end he says, "I feel that as an individual, Kents served my purpose best, but I would like to see a scientific investigation of the effects of the asbestos contained in the filter."

Now, right about this same time, Dr. Knudson -- who developed the filter media that Hollingsworth and Vose was manufacturing -- Dr. Knudson worked for them. He wrote a letter to Lorillard saying they were having a problem anchoring the asbestos in the filter. And right about that same time, Dr. Knudson, incidentally, quit smoking Kent cigarettes. Milton Horowitz was not so lucky.

The patent describes a loosely -- the patent describes a loosely, uncompacted mixture, crepe paper, asbestos fibers, cotton and cellulose acetate. And it's not surprising that the asbestos has come out looking like a filter.

MR. OHLEMEYER: Your Honor, I really don't want to

interrupt, but this is not a statement of what the evidence will be. This is Ms. Chaber's argument about what she thinks the evidence, that may or may not be admitted in this case, will be. It's not a proper opening statement.

THE COURT: Well, if she's going to prove it, and I

guess she says that's what she's going to do, she can go ahead and say it.

MR. OHLEMEYER: What she's doing is arguing what she thinks it means, not what she's going to prove.

THE COURT: The jury can hear this is an opening statement, what she intends to prove. If she doesn't prove it, it's a failure on her part.

MR. OHLEMEYER: Thank you.

MS. CHABER: During this time period, Lorillard sold more than 13 billion Kent cigarettes with asbestos in the filter. That's some 13 million cigarettes every day, 30,000 of which were smoked by Milton Horowitz. He did not know that he was inhaling asbestos. It's something that the defendants didn't tell very many people.

When they got a letter requesting answers to a number of questions, one of those questions was: What is the filtering element composed of, and the answer was: The filtering element of Kent cigarettes is composed of Micronite, which is a rather complex mixture, the exact nature of which we believe it is unethical for us to disclose. And then they tell them that the filtering element in Old Gold Filter Kings, which does not have asbestos in it, is a special grade of absorbent tissue paper. And the patent, although it states asbestos, also states that: Other substances could be used in place of the asbestos.

From 1952 to 1954, Hollingsworth and Vose was warned about the hazards of asbestos. The Massachusetts Department

of Labor, where the plant was located, sent inspectors out to the factory who told the defendants, who already knew, told Hollingsworth and Vose that asbestos was hazardous.

And you will hear, either, hopefully from the witness stand or in the form of a deposition read to you, prior testimony taken from a Elise Comproni, who inspected that plant, who will tell you that he was appalled by what they were doing with the asbestos, something that could be inhaled into the lungs, but that he was powerless to do anything about it. And that in the 1950s. He was unwilling to champion a cause, go public with it, go to the press. He didn't have any powers, under the Massachusetts Department of Labor, to close them down. They weren't doing anything illegal.

And there was a joint agreement between Hollingsworth and Vose and Lorillard that they are in this together; that this was a joint effort by both of them, just as it is in this courtroom. As long as Lorillard wanted it, Hollingsworth and Vose kept making and selling the asbestos filter. And both these defendants supplied and sold it, regardless of the dangers.

Now, to the public there were pseudoscientific tests to show how effective the Kent Micronite filter was, but what they had people do was breathe through a piece of paper, the cigarette, and breathe through a piece of paper and handkerchief, and they showed that the stain on the piece of paper was less with the Micronite filter. That was the science shown to the public.

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But when they did testing elsewhere with real scientists, they found out that asbestos came out of the smoke. Now, before 1954 -- they started in 1952 -- before 1954, they had some tests conducted, but the efforts will show that these tests are inadequate to demonstrate asbestos to be able to detect asbestos.

Asbestos is microscopic. It's measured in a measure called microns. These microns, if you look at the size of a micron and you imagine down, it's about the size of a red blood cell. So you can imagine how small the fibers are.

Well, you need special equipment to be able to detect asbestos fibers. And this special equipment was not used by any of the researchers they hired before 1954. But in 1954, Lorillard went to one of the few electron microscopists, people who specialized in that. There were a very limited number of 50 in the 1950s who actually had this equipment, and they went to Althea Revere and Wanda Farr, who women, very early scientists in the 1950s who owned an electron microscope, and they asked them to do some testing.

Now, we know this from some correspondence that refers to reports by Revere and Farr. The reports are not in Lorillard's files, but the correspondence indicates that asbestos was coming out in the smoke.

So they then sent to Ernest Fulham, who was another person who had an electron microscope -- and we are again in 1954, right in the middle of this time period -- and Ernest Fulham confirmed that asbestos was indeed coming out in the smoke, confirmed Althea Revere's earlier findings.

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Again, all we have is some correspondence. There are no reports. There are reports in Lorillard's files from these other tests that were conducted. There are reports in Lorillard's files of some subsequent tests, again, not using an electron microscope or an adequate electron microscope, but these are not there, but what we do have is something called photomicrographs.

And you can actually take a photograph of what is seen in the microscope. And they had this technology back in the 1950s. And Ernest Fulham's lab did this. And low and behold, when somebody went to Fulham's lab, they found that he still had the negatives. And from those negatives, pictures were made. You can actually see photographic pictures.

Ann you will hear from a Douglas Hallgren, who was Fulham's assistant. And he'll testify that they were the only two people that worked there -- he was working part-time and he was Fulham's assistant -- and that their job was to examine the smoke from Kent cigarettes, Kent that had asbestos in it, and to see if there was asbestos in the smoke. And indeed, they confirmed it.

Now, both Revere and Fulham, we know that Lorillard respected them because there are subsequent reports in 1958, after the asbestos was removed, from Revere, that she did work for them after that, and from Fulham, that he did work for Lorillard after that, and these pictures show asbestos fibers.

Now, they are identified as Kent silicates. A

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silicate is the broad range of category that minerals fall under. That is fibrous minerals like asbestos fall under. The composition of the filter was crepe paper, cotton, cellulose acetate and Crocidolite asbestos.

Crepe paper doesn't look like that, cellulose acetate doesn't look like that, cotton doesn't look like that. They are all plant products. This is asbestos. And this is the asbestos that was seen through the microscope, through the electron microscope at Fulham's lab.

And Mr. Hallgren will testify that they also looked at experimental cigarettes, ones where Lorillard was trying to treat the filter to keep the asbestos in, and he'll testify that none of the treatments worked. In the smoke there would be asbestos fibers, whatever they did with it. And as a comparison, they were sent -- a comparison to these experimental ones, they were sent what was called regular Kents. Regular Kents. That's what Milton Horowitz smoked.

Now, as I said, there were some, and the evidence will show, there were some tests after Fulham and Revere that they had done, but the techniques were all inadequate. Hollingsworth and Vose did a test there, but they even state in their correspondence that they didn't have the right equipment or the right technique to use. And the Armor Laboratories also was not done with adequate technique.

And apparently, although the public didn't know, other cigarette companies apparently knew what was in the Micronite filter, because they started an advertising campaign to compete against it.

L&M came out with an ad that said: Effective filtration from a strictly nonmineral filter material, alpha cellulose, exclusive to L&M filters, entirely pure and harmless to health. And this was directly in response to Lorillard's safe, harmless, and dust-free advertising.

Now, mid-1956, Lorillard abruptly canceled the contract with H and V, but they never, the evidence will show, recalled any of the Kent with the asbestos filter that were already out in stores, that were already out in the distribution. Evidence will show they never told the public that they had changed from this asbestos filter to now a total cellulose acetate, or nonmineral filter. They still used the Micronite name and they still made health protection claims.

Milton Horowitz was a loyal Kent cigarette smoker. He switched in 1952 from nonfiltered cigarettes to Kents because they were considered the safe cigarette. It's the only filter cigarette he ever smoked, and he smoked it for ten years, one pack a day, until he quit on New Year's day, 1963.

Now, the one thing about these fibers, the blue asbestos -- actually, any asbestos, is that it divides down and splits into finer and finer fibers, needle-like structures in the lung. In fact, the lung tries to break down the asbestos fibers in trying to get rid of the foreign particle, and the asbestos, which is indestructible, merely splits into smaller and smaller pieces. And the evidence will show that asbestos inhaled with tobacco smoke, that the

tars and the vaporous gases helped bring the asbestos down into the deep recesses of the lungs where they never leave, except for to migrate to the pleura, to the lining of the lungs, to where mesothelioma forms.

Now, there's been some more recent testing that was done. It was done initially -- a cigarette collector, a doctor John Slade, a doctor on the East Coast -- apparently there is some kind of club where people actually collect old cigarettes, and Dr. Slade sent some of those and actually

brought them down, some of those old Kent cigarettes, vintage Kent cigarettes in their cellophane wrapping, completely intact, aluminum foil protecting the cigarette with cellophane wrapping around it, and brought them down to Dr. William Longo, who is an expert, present-day expert, in the electron microscope, what's called a transmission electron microscope, and there's also scanning electron microscope.

And he has a laboratory called Materials analytical Services. He's done work for the EPA. He trains and teaches people how to use electron microscopes, and he's been a consultant to business, to industry, to manufacturers, and he's been a consultant to lawyers, lawyers for manufacturers, and lawyers representing people such as myself.

And he got ahold of these vintage, original Kents from 1952 and 1955. Now, you wonder, how do you know what year a cigarette is from? Well, apparently there is a thing called a tax stamp on the end of cigarettes, or at least there was.

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I don't know if that still exists. And you can date a cigarette by the tax stamps. It has to be registered.

And the first thing he did was he tested these filters to see: Is this really true? Do they really contain Crocidolite asbestos? And the answer was: Yes.

He then sent off a couple of the cigarettes to a place that had a smoking machine. Now, these are machines that are actually designed to test tar and nicotine levels. And the reason they have a machine is so that you get a consistency in the tests so that you can compare tar and nicotine from brand to brand, or different types of cigarettes. So he sent off these cigarettes to a smoking machine.

And the smoking machine used some kind of a filter that apparently had glass fibers in the filter on the smoking machine. They collect the materials from the smoke, collects onto some filter from the machine, and then you can analyze the filter.

Well, when he went to analyze the filter, there were so many glass fibers there and glass particles from this filter from the machine, that he would have spent a couple of years trying to count and look for the asbestos. So there went a couple of cigarettes out the window because the filter was unusable, in terms of being able to look for asbestos.

So recognizing that that was a problem, he devised his own protocol, and that's something that he does if a manufacturer goes to him and asks: Can you test my product,

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he devices a protocol, and that's what Fulham did, and that's what Revere, presumably, did.

And he devised a protocol to obtain the smoke from Kent cigarettes from this time period during the time that it had Crocidolite in it. And there's no issue that he did that part of the test at the request of a plaintiff's lawyer, such as myself.

He found asbestos in the smoke of the cigarettes. I'll show you some of it. What we have here is the side view -- what he looked at in the asbestos filter was a side view looking at the filter like this. And you have to understand we are looking at this highly magnified.

And what you're seeing in here, the bright white -- because this is electron microscope, the asbestos shows as

bright white -- that is the asbestos on the end of the unsmoked cigarette. And what you're looking at is a further magnification in my right hand. Here's the edge of the filter and the white is the asbestos. We have an either further magnification. You can see the fibers, all the white. The bigger fiber here, that's the cotton.

And after he smoked the cigarettes -- and by smoking them, I don't mean that he actually, physically smoked them, but he devised a protocol using a syringe, taking some air that would simulate a person puffing on a lighted cigarette, and then trapped what was in there, examined it under the electron microscope, and what he found was similar to what was found in Dr. Fulham's laboratory was asbestos, Crocidolite asbestos. From the smoke. From the Kent

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Micronite filter in the 1950s.

And Dr. Longo has had his study published in a journal called Cancer Research, the same pictures that I've showed you, and it was published in June of 1995, two months ago. And this is published in what's called a peer review journal. And what that means is that peers of his, other people with the same expertise, have evaluated and examined the study he submitted to determine whether or not it was worthy of publication. And other than some changes in language, phrasying of English, it was published unchanged.

And subsequently, he's done some follow-ups, again at the request of lawyers, using the smoking machine, and indeed, he still found asbestos in the smoke. A little bit lower quantities than had been found in the protocol that he set up, but still at dangerous levels. And the evidence will show that the defendants had the technical knowledge and the wherewithal to create studies and tests, but had not done so.

And Dr. Longo videotaped the whole procedure that he did, so that no one would question what he did, how it was done. It's all on a videotape. It's three-and-a-half hours long, and it's boring as can be. And I'll probably show you little portions of it, and I'm sure the defense will pick out other portions to show you.

But Dr. Longo will tell you that he videotaped it and videotaped the procedure so that nobody could question or question what he did, so that it was there for all to examine and all to see.

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And he also took photomicrographs -- those were some of the pictures that I was showing you -- through the electron microscope of the Crocidolite asbestos. And what he found and calculated was much greater than any background levels of asbestos.

You'll hear it said that there is asbestos in the air everywhere and we are all breathing it. It's at small levels and it is not in the United States, Crocidolite asbestos. You will hear from a Dr. William Nicholson, who has published and set the standards for the EPA, for NIOSH, National Institute of Occupational Safety and Health, the asbestos standards, for OSHA, Occupational Safety and Health Administration, and he will tell you that he's done a survey of the air in the United States, and Crocidolite asbestos is not a background exposure that we have.

Crocidolite, there are no natural outcroppings of Crocidolite. You'll hear that in California, our state rock is called serpentine which, in its fibrous form, happens to be asbestos, and that there were actually some asbestos

mines up in Calaveras County.
You will hear that any background asbestos that's in the air merely adds to people's exposure, and that it's mostly chrysotile, which is considered by many to be less hazardous than Crocidolite asbestos. It's considered by most people to be the most hazardous form of asbestos. And when they've done studies of people who have Crocidolite exposure, only Crocidolite exposure, they found the highest rates of disease and the highest rates of mesothelioma.

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Asbestos is not only indestructible and once in the lungs stays there, unless it moves to the lining of the lungs, but there's a delayed response. The body has a delayed response to asbestos. 35 or 45 years after exposure is when the peak of disease is, when you see the most cases of asbestos disease from people who have been exposed to asbestos.
This is what's called latency. And it's like getting the flu. When you sit next to somebody at work and they are sick and you go: Oh, please, stay away from me. I don't want to get sick, well, you don't get sick that minute. What happens is it takes awhile and a week later you find yourself sick, that's the latency.
With asbestos disease, the latency isn't a week, but it's 35 to 45 years, and that's not a magic number. You can get asbestos disease in less than 35 years, and it can take longer than 45 years for it to come down, but this is the time frame that you see the most incidence of disease is 35 or 45 years later. And 42 years after Milton Horowitz started smoking Kent with the asbestos Micronite filter, he was diagnosed with mesothelioma.
The only known cause in human beings of mesothelioma is asbestos exposure. There's a substance that's like asbestos called zeolite, but the only place we really know that exists is in Turkey, and the evidence will show that Dr. Horowitz never went to Turkey.
There's no known safe level of exposure to asbestos. You will hear from Dr. Nicholson that all levels of exposure

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creates some risk. But the thing about mesothelioma, you don't need a lot of exposure. There are reports of people getting mesothelioma from merely living in the neighborhood of a factory or a mine.
There're reports of mesothelioma in people who lived in the same household as somebody who worked with asbestos who may have carried some of it home on their clothes. And the asbestos in the Kent Micronite filter was loosely uncompacted. That's what the patent said, it was to be made loosely uncompacted. And the evidence will show it was unencapsulated. It didn't have any kind of treatment on it in an attempt to reduce it. And what it was, was a time bomb waiting for the latency to go off in Dr. Horowitz's lungs.
The evidence will show that the defendants are responsible for compensating Milton Horowitz because they supplied a defective product which failed to perform as safely as the ordinary consumer, like Milton Horowitz, expected it to.
The evidence will show the defendants are responsible for compensating Milton Horowitz because the benefits of the design of that filter were so far outweighed by the risk.
The evidence will show that they are responsible for compensating him because they fraudulently, falsely and

misleadingly advertised this product as pure, safe, harmless and dust-free, and offering protection of health, which it did not.

The evidence will show that these defendants are

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responsible for compensating Milton Horowitz because they failed to warn the consumers of the potential risks.

And they are also responsible, the evidence will show, because they were aware of the probable consequences of their actions, but did it anyway, in order to make money.

Now, let me tell you a little bit about Milton Horowitz. He had an active, full-time practice as a psychotherapist. He's not an M.D. doctor, a psychotherapist, he's a psychologist, a Ph. D., and he's having to give up that practice. He has had to terminate all his patients. When you're in long-term therapy, you have to set dates. You can't say: Hey, I'm not coming back tomorrow. People spend a long time. And the evidence will show he had no plans of retiring. That was not in his mind. He hoped to spend more time with his family, but the evidence will show that he had an office behind his house, which is where he did his work, and that he intended to keep going.

Dr. Horowitz was 72 years young at the time. He just celebrated his 72nd birthday on July 24th of this year, which, incidentally, was the original trial date in this case, and he's been married to Shirley Horowitz for 46 years. Shirley's 69 years old. They have four children and a number of grandchildren, and they are very close to all of their children.

In 1994, he got the diagnosis of mesothelioma, which is like getting a death sentence. His doctors did not know about Kent and asbestos at the time. They knew he had maybe

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some small exposures to asbestos.

He came back on a troop ship from Japan at the end of his army service, spent 13 days on the troop ship. He didn't do any work on it, he was just a passenger on board it, but he may have had some exposure there.

And he was also a bystander while he was a teacher and a practicing psychologist in both Cleveland at Reserve University, what's now -- or Western Reserve, what's now Case Western, and also a small amount of potential exposure at a construction site next to his office in Los Angeles at the Reiss Davis Center.

What's known is that in some individuals, there's no reported asbestos exposure. Some individuals who get mesothelioma, there's no report of asbestos exposure. Generally, when these studies have been conducted, they have been conducted after the person has died, and they are asking family members: Well, what did they do and where were they, and so forth.

And what seems to be the case is that often people's asbestos exposure is hidden. And particularly if it's to something like this Kent cigarette, where most people do not know and did not know and still today do not know, including many doctors, that Kent had asbestos in it.

And since smoking does not cause mesothelioma, a doctor would not spend a whole lot of time inquiring about brands that people smoked. It would have no relevance, they would believe, to their opinions.

The evidence will show that it is fortunate that

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mesothelioma is a rare disease, since it doesn't take very much asbestos to cause it. It's fortunately rare in the population. And even among asbestos-exposed people. It's more frequent among people who have occupational jobs exposing them to asbestos, but it's still, even in those populations, a fairly rare disease.

And there is no threshold below which someone can't contract mesothelioma. What's known is that the more exposure you have, the more people will develop mesothelioma. The less exposure that people have or a population group has, the less people will come down with the disease. And that if you have no exposure, you'll find no disease. And what you'll hear over and over again is that Crocidolite, the asbestos that was in this filter, is the most hazardous form of asbestos.

Now, one of the things you're going to have to do, and your job will be, is to judge the credibility of all the witnesses, including Dr. Horowitz. And you will have to determine whether or not you believe Dr. Horowitz, that he smoked the Kent cigarettes in the right years, in the years where it had the asbestos filter.

His memory is not perfect, like most of our memories, looking back 40 years. But he does have a good memory for important events in his life. And one of the most important events in his life was his first job after he got his Ph.D., graduated from the Meninger Institute in Kansas, and went off to Cleveland. He moved to Cleveland in February of 1952 to begin as an instructor at Western Reserve University.

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And he started smoking Kents in the spring or the summer of that year. He recalls being influenced by all the advertising for this product, by all the claims of health. And the 1952 date is clear in his mind, but you will have to judge that.

What's less clear in his mind is the brands that other people smoked or the exact packaging that it came in, and all the little details. But what he can tell you is, and what he will tell you is, that that filter that I showed you, he'll tell you that he recognizes this pack, and that's what he started out with, and that he switched to the king size.

And he'll tell you that he recognizes that filter that had the crepe paper in it, that had the little holes in it that was blue. And he distinctly remembers the color blue. That blue, because it was the color of his father's eyes, and that's one of the things that attracted him to this cigarette. That, and switching from a nonfilter to a filter, because it was going to be safe.

And he recalls that he smoked these cigarettes for ten years, and that he quit in January of 1963; that he was starting to be concerned about health hazards of smoking. This was before the Surgeon General's report, before there were ever warnings on cigarettes, and that he didn't want to be a bad influence for his children. He didn't want them to start smoking, and he truly believed that if you want to set the right example for children, you have to do it yourself. So he quit smoking.

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And you will hear from family members that Kent was the house brand. That was the brand that was smoked around the house. And unfortunately, his children didn't exactly take his example well, and the first cigarettes they remember sneaking were Kents.

Mesothelioma is a fatal disease. There's a less than ten-percent response rate. I don't mean cure, I mean response to treatment, where treatment helps slow the cancer down. There is no cure.

Before 1994, he was active. He worked full time. He swam a half a mile every morning. In fact, that's how he discovered he had the mesothelioma, he couldn't make it to the other side of the pool, because he couldn't breathe.

And when he went to the doctor, they found that he had fluid in his lungs, which is a classic way that mesothelioma presents. And the diagnosis, the first diagnosis they made was an adenocarcinoma, which is a form of a lung cancer, a type of cancer, was quickly changed, when they did further studies, to mesothelioma.

And that's been confirmed at lung Kettering Lung Cancer Center in New York, and it's been confirmed by Dr. Samuel Hammar, who will be here, hopefully, tomorrow, who is the author of a textbook on pulmonary pathology, and who is an expert at the diagnosis of mesothelioma.

He's an expert about asbestos-related diseases. He's on the mesothelioma panel for Canada and United States. He's the doctor that reviews all of the pathology for a study that's being done by the University of California at

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San Francisco on giving people beta carotene and other high doses of vitamins, people who have been exposed to asbestos, and he reviews all the pathology materials for them, as well.

And the evidence will show that Dr. Horowitz was healthy before he was diagnosed with the mesothelioma. He quit smoking in 1963, and in 1971, he was diagnosed with a colon cancer. He had surgery. He's never had a recurrence of it. It's been more than 20 years, and he is considered cured from that. He barely slowed down, but he did, he changed his eating habits. In fact, his family calls him "The King of Crunch," because of the cereals that he eats every morning.

In 1986 he was diagnosed with prostate cancer. He had surgery, cancer went into remission, and then a couple of years later he had increasing PSA levels, which is prostate specific antigen, which is a measure and can be an indication of a recurrence of prostate cancer.

He was treated with hormones for that, and the PSA went down and has been at zero and maintaining at that level for a number of years. And the evidence will show he went back to work, he went back to his lifestyle, and he was fine until this mesothelioma.

The evidence will also show that those diseases are not connected to the mesothelioma. They are not a spread of any other cancer. It is a form of poisoning, asbestos poisoning.

And there's no evidence that the prostate cancer has

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spread to any other organs, and there's no evidence that he wouldn't have lived his full and normal life time. The colon cancer and the prostate cancer were both treatable diseases. Mesothelioma is not.

As the cancer, the tumor, the mesothelioma started to spread, it encases the lungs. The lung is divided into different sections, and it started growing between the sections into his lungs.

And as it started to spread in that fashion, his doctor, his oncologist, his cancer specialist, said: We

can't just sit by and do nothing. Let's try something. And he spent a number of hours researching, and he put together his own chemotherapy cocktail for Milton Horowitz.

And low and behold, Milton has had a good response to the chemotherapy. It's extremely unusual. Six months of chemotherapy getting nauseous, being dizzy, losing his hair, losing weight, being in pain. It's affected his hands. He can't play the piano anymore. It's affected his legs, numbness and tingling, but he has a momentary reprieve.

Dr. Rosenbloom can't even believe it himself. But it's momentary. It's temporary. The cancer is not gone. The tumor is still there. It is still surrounding his lung, and it will start to grow again, and it will kill him.

He's had $50,000 of medical expenses to date, and there's another 50 to 100,000 anticipated in the future. He's lost $70,000 of income to date as a result of the mesothelioma. And for the next three years, even though he might have worked longer than that, the next three years,

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even considering a reduced schedule, he will lose $170,000.

And he has suffered. He has been in pain. He's had emotional distress. He's had to give up his patients, which is hard on both the patient and the therapist, and he's had a loss of enjoyment of his life, and he's facing losing the next ten years of his life.

Shirley has also suffered. She's suffered by his suffering. She's watched him decline. She'll tell you how, when he was going through the chemotherapy, how he'd get dizzy; how he fell down the steps because he was so dizzy and bruised himself; how he started to look like a holocaust victim because he lost so much weight. And she is agonizing and, at the same time, trying to enjoy their time together.

And we will ask you at the end of this case to award punitive damages, as well, for the conscious disregard these companies showed the public, the conscious disregard for the health and safety of the people, people like Milton Horowitz, and for the fraud that they committed.

And I'd ask you, at the end of this case, to hold them responsible for their irresponsibility, to make them accountable, and to render a meaningful verdict for Milton and Shirley Horowitz.

Thank you.

THE COURT: Thank you. We will take the afternoon recess at this time until 3:25. Please keep in mind the fact that you are not to discuss the case, either amongst yourselves or one anyone else. If anyone attempts to discuss the case with you in any way, please advise the

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Court of that fact at once. 3:25 return please.

(In chambers outside the presence of the jury.)

MR. OHLEMEYER: I guess the record should note we are in chambers with counsel present and the judge.

Your Honor, I would like the jury to be instructed that what Ms. Chaber has shown is not evidence, it is not evidence until she puts it into evidence, and I think what went on during the last hour-and-a-half was extremely prejudicial, it was improper, and the jury is now left with the impression that all of that is uncontested evidence; that there will be no objections to it, and that she has somehow shown them something that has been established as a fact.

I think the entire procedure was improper. I think the jury should be so instructed that that is not evidence,

and it is not evidence until it is admitted into evidence in court or through a witness.

THE COURT: Any comment?

MS. CHABER: I believe, Your Honor, you did that prior to my opening. I believe you told the jury that none of this was evidence, that I had to prove it, that they could hold me responsible if I didn't prove it, and I believe all of that was on the record and said to the jury before I got up and did anything.

And as I expressed off the record to the Court, I have a good faith belief that all of the things that I have shown the jury will come into evidence. We have had certain prerulings from the court with respect to Dr. Longo, with

respect to the Fulham photomicrographs, and I only showed a couple of letters and a couple of ads. I showed a picture that my client can authenticate of the cigarette filter.

I do not believe that there was anything improper about what I did, and if I don't prove it, I'm sure these defendants, who have ordered a copy of the transcript, will shove it down my throat, to be blunt.

THE COURT: Okay. All right. Well, I think I've admonished the jury that what she said is not evidence and that she has to prove it. If she doesn't, she'll suffer the consequences.

MS. ROENISCH: I'm not sure it was clear as far as documents.

MR. SCHOLL: I would agree.

MS. ROENISCH: What I would ask for is the documents are not evidence.

THE COURT: All right. I'll emphasize it again.

THE COURT: Sure.

(Recess taken.)

(In open court in the presence of the jury.)

THE COURT: It appears as though everybody is here, all the jurors and the attorneys, except for one juror, who is now arriving.

Ladies and gentlemen, I had indicated to you earlier that what the attorneys say is not evidence. I want you to keep that in mind. I didn't say specifically that all of the things that Ms. Chaber has shown you are not admitted into evidence at this time. We will see whether or not they

are admitted in evidence.

You looked looked at them and you know what they were, what they said, so on, but they are not evidence for you to consider until they are admitted into evidence and marked, and then you will see them in the jury room.

The defense may now make their opening statement.

MR. OHLEMEYER: May it please the Court.

Once again, I'm Bill Ohlemeyer and I represent Lorillard. You met Ron Scholl yesterday. And before I start, I want to introduce Jim Cherry. Mr. Cherry is vice president of Lorillard, and he is here and will be here for the trial, but I wanted to introduce you to him so if you saw him in the hall or the elevator, you will know that he is here with me. There may be a few days or a few sessions where he's not here, but for the most part, Mr. Cherry will be here throughout the trial.

The other thing I want to tell you is that I know it's getting late in the day. I'm going to try to be very brief. I think the place that I want to start is much of the evidence that you'll hear in this case has to do with the

time period 1952 to 1956, and it was in May of 1956 when Lorillard stopped selling cigarettes with the asbestos filter that you heard about.

The one thing everybody's going to agree about is this was 40 years ago and 40 years ago, things were very different. Those of us who were not alive in 1952 mark time and engage time a little differently than some of you who night have been, but this was a time when Harry Truman was

just leaving office as president, Dwight Eisenhower was taking office. The San Francisco giants played baseball in New York. They were the New York Giants then.

And those of you who have been here since the '50s can probably remember some of the changes in and around San Francisco in and around these 40 years. But a lot of what we are going to hear about deals with this time period.

And most of the evidence that I'm going to present -- and I want to remind you there are a lot of ways for the evidence to come in. It can come in direct examination, cross-examination, documents and exhibits. And some of the things that I'm going to list for you today you may not hear in my case, you may hear them from the plaintiffs' witnesses. And even though the plaintiff has put the witness on, that doesn't mean that it doesn't prove something that I expect to prove to you.

But there are three main areas of evidence that you're going to hear about. The first one is asbestos filter material. And I'll go into this in a little bit more detail, but the evidence will be that at the time, putting asbestos in a cigarette filter, or any other filter, was a good idea. It was not a secret.

The cigarette that Lorillard sold with this filter was a poor seller and by 1956, there was a need to improve or to change certain things about the cigarette, and you'll hear about those.

The next thing you'll hear about is Milton Horowitz, Dr. Horowitz. You'll hear about Dr. Horowitz's medical

history, including, as Ms. Chaber told you, the fact that he's had cancer before. And you'll here about Dr. Horowitz's memory and recollection.

And the reason I say that is this, and I'll describe it in a little more detail in a minute. I don't know what Dr. Horowitz is going to say when he testifies, but we do know what he has to say about a lot of these subjects.

Dr. Horowitz was deposed at his attorney's request. We all went to Beverly Hills and for two days, we took testimony from Dr. Horowitz under oath, just like in a courtroom. And he's described for us his recollection and his memory and his employment history and his education, and things like that. So we have a fairly good idea of what Dr. Horowitz has to say. And what Dr. Horowitz's testimony will establish is that he did not smoke Kent cigarettes before 1956.

And then finally, you'll hear a lot of evidence in this case about cancer and about mesothelioma. And you'll here, probably from Dr. Hammar, who wrote this book, that there are other causes of mesothelioma besides exposure to asbestos. There's no doubt that exposure to asbestos in the workplace is a common cause of mesothelioma. But there are other things that cause it.

And you'll also hear that there is a threshold level, a minimum level of exposure before which you're at risk of

developing the disease. Mesothelioma is a cancer, and you'll hear a lot about cancer, as well as specifically the type of cancer known as mesothelioma.

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So let me back up for a moment. In 1952, 1956, using asbestos in a cigarette filter was a good idea. Asbestos was being used in a lot of different things at that time and had been for decades. It was being used as an insulation material, it was being used as a filter material, it was used in consumer products, ironing board covers, fake decorative snow to put on Christmas trees, things like that.

Asbestos has been used and was used in a lot of different buildings, ceiling tiles, floor tiles, insulation materials, up through the 1970s. And, in fact, certain laws required that asbestos be used in certain buildings, such as schools and other public buildings into the 1970s.

There are regulations today that regulate exposure to asbestos in the workplace, and they don't differentiate among different types of asbestos fibers. They just set levels that are designed to be put in workplaces. So from 1952 to 1956, asbestos was certainly something that was being used in a lot of different things.

At that time, asbestos had been researched and studied, and the only health effects that those researchers had associated with asbestos was exposure to asbestos in the workplace, prolonged and intense occupational exposure to asbestos. And at that time, during the '50s, it only involved people who were working with raw asbestos, people who were mining it, who were weaving it into asbestos cloth, or who were milling it into other things.

And in the 1950s, what was believed was that if you were exposed to asbestos at certain levels over long periods

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of time in those types of workplace situations, you could develop a disease called asbestosis, and that is an occupational lung disease. It's a scarring of the lung.

Back in the 1950s, that was the only disease that medicine and science had connected with asbestos. Asbestos was still being used in buildings, it was still being used in consumer products, it was still being used by workers installing insulation. But at that time, asbestos was believed to be a health risk in the occupations using raw asbestos.

It wasn't until the 1960s that researchers began to think that people who were working with asbestos in the workplace, installing asbestos insulation or installing asbestos tiles, could develop asbestos-related diseases.

In fact, it wasn't until 1960 that the association between asbestos and the disease mesothelioma received wide publication and discussion from the medical literature. And those people were people who were living in a town where asbestos was being mined and being used to pave the streets, and things like that. And for the first time, then, in 1960, asbestos and mesothelioma was connected.

So asbestos was being used in a lot of different products. It was a good filter material. The physical properties of asbestos made it a good filter material for a lot of reasons related to how things are filtered and how filtration works. Asbestos had been used, it was used for years after that, to filter air, to filter beer, to filter wine, to filter liquids in a laboratory.

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At the time in 1952, asbestos had been used in Army

and Navy gas masks. Crocidolite asbestos filter material was used in gas masks that were used in World War II. It was also being used in Atomic Energy Commission facilities to filter the air so that radioactive particles wouldn't escape from those facilities. It was being used in hospital operating rooms to filter the air and to help prevent infection and other problems in hospitals.

This was a time when the war had just ended and everybody was interested in using that wartime technology, the things that had worked so well in the war, to try to make life easier, to try to incorporate them in consumer products.

There are some references to this being the atomic age, or science and technology being very important. And so there was nothing unusual about a company taking a product, such as the asbestos filter material used in the military gas masks, and trying to find a way to use it in something that they were selling.

And what happened is in 1952, Lorillard started selling Kent cigarettes with this asbestos filter material. The filter was made of cotton, crepe paper, cellulose acetate, which is a sort of synthetic, short synthetic fiber, and these asbestos fibers.

Asbestos was somewhere, probably, about ten percent by weight of the filter. It wasn't all asbestos. And you heard about the patent. A description of the patent is loose and uncompact filter material is a description of

filter material. It doesn't have anything to do with whether the material is loose inside the filter.

A loose and uncompact filter is a filter that is made a certain way, as opposed to a dense or a compact filter. Examples are filters you use to filter coffee are dense filters. Filters that you use to filter air, perhaps in a furnace or an air system, are sometimes referred to as loose or uncompact filters.

It doesn't mean that this filter material wasn't significantly compressed when it was manufactured. In fact, the evidence will be that it was compressed at a ratio of 32 to 1, which will be like taking three feet of the filter material and pushing it down into an inch before it was fabricated and put on the cigarette filter. And there will be testimony about that, about how the cigarette filter was actually manufactured, and how it was attached to the cigarettes.

But there was no secret about it. The fact that asbestos was used in this cigarette filter was disclosed to the government when the patent was applied for. And a patent was issued by the government for this asbestos filter material.

It was also known to the American Medical Association. The American Medical Association at that time, as they still do, publishes a journal that is sometimes referred to as JAMA, the Journal of the American Medical Association.

And in July of 1954, the chemical laboratory of the American Medical Association did some tests on filtered

cigarettes. There were only a couple on the market, and they were trying to see which ones were better than the others in filtering out the smoke. And in those articles, they described the use of asbestos filter material in this cigarette filter.

There were actually four separate articles, two of

which talked about the asbestos filter material. None of them said that there was anything wrong or any reason to be concerned about using asbestos in a cigarette filter. In fact, to give you some sense of how things were in the 1950s, this is the journal that gets sent to doctors and indeed, there was cigarette advertising at that time in the Journal of the American Medical Association. There's an ad here for Camels, there's an ad for Phillip Morris brand cigarettes, and it's obviously not a secret to the American Medical Association, and whoever read the journal, that there was asbestos in the filter material.

Consumer Reports is published by an organization called Consumers Union, they did tests in the '50s, and they disclosed the fact that there was asbestos in the cigarette filter. And again, made no mention of it being a health concern or no alarm about it at all.

Popular magazines like Newsweek -- and here are the Dodger are still playing in Brooklyn. You can see the B on his hat -- and Business Week also wrote articles about this new filter and again, disclosed the fact that there was Crocidolite asbestos in the filter. Didn't say anything about being a health risk or causing any concern. So the

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fact that there was asbestos in the filter material was not a secret.

Now, the word "Micronite" is a trade name. Like a trademark. It was used dozens of years to describe the filter used on Kent cigarettes. The word Micronite doesn't mean there was asbestos in the filter. It just is the trademark that was used for whatever filter is being used over the years on that cigarette.

The Kent cigarette sold during these years, though, was a poor seller. The filter had an effect on the taste and flavor of the cigarette. It removed a lot of the things in the smoke that made cigarettes taste the way they taste.

The cigarette that was sold during these years also was sold at a premium price. The asbestos filter material cost more to manufacture. And the process that they used to manufacture the cigarette was slow and inefficient. So Kent cigarettes were sold at a premium price. They cost more than other cigarettes. Premium price, weak taste, not much flavor, and they weren't a very big seller.

During this entire time period, there was never a year where they had more than one percent of the market. And what that means is 99 out of every 100 cigarettes that got sold during these years was something other than a Kent cigarette. In fact, in 1955, the market share was about point six-tenths of one percent, and in 1958 it was point eight. Less than one percent of the market. Which is why in 1956, it became necessary to change from the asbestos filter to something else.

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And the reason it happened is that the people who made the filter material developed a way to make a nonasbestos filter that was almost as efficient as the original filter, but was cheaper and easier to manufacture, and it allowed Lorillard to lower the price, sell the cigarettes at the same price as other brands, and still put out something that people would by.

Before 1956, Lorillard had certainly an incentive to change or to improve the cigarette. It wasn't selling. They had the opportunity, they had available to them other types of filter material. They were selling a cigarette in

1953 called Old Gold that had a filter on it that had a filter that was somewhat like what they ended up using in 1956, but wasn't as efficient. So it wasn't as if they couldn't put something else in the filter. And it wasn't as if they were selling a lot of the Kent cigarettes.

But it wasn't until 1956 that that they finally found an efficient manufacturing process and a supplier of filter material, and they changed to the nonasbestos filter material in May of 1956.

So a lot -- and a little bit of what we will talk about, what you'll hear about in this case, will refer to these two separate cigarettes. This is the old one with the asbestos filter. This is the new one, which is after May of 1956.

The price of the old one, as I said, was a premium price. When they switched to the new filter material, it was cheaper to buy, easier to manufacture, and allowed them

to lower the price to the same price as other cigarettes. And the price reduction was advertised in full-page ads across the country. The sales were very much improved after 1956. Lorillard sold as many Kent cigarettes in 1957 as they did in 1952 and all the way through 1956, combined. And in 1958, they sold three times as many as they did in 1957.

So you had a cigarette before 1956 that never had more than one percent of the market. After 1956, it became a popular cigarette and became one of the most popular filtered cigarettes in the market by the late 1950s.

The filter on the old Kent was a blue and white, kind of marbled color. The composition of the filter was very different than what cigarette filters look like today. It had the crepe paper in it and it had the different filtering material. When they switched to the new filter material in 1956, the filter was a solid blue color, and it looks much like a cigarette filter looks like today. The composition of the filter material is very similar to the types of filters that are on the market today. So in May of 1956, there were a number of things about this cigarette that changed.

Now, you've also heard -- you've heard about some tests that Ms. Chaber described to you that were done during the 1950s at Lorillard. And there were actually a number of tests that were done. Remember, this is the first filtered cigarette that the company had sold. It's a time period where business is doing a lot of research and development

and using some of these new analytical tools to look at different aspects of the products, and there were a lot of tests that were done.

They did tests to measure the temperature of the smoke, they did tests to determine how efficient the filter was at removing tar and other things from the smoke, they did tests to determine whether the filter made it harder to draw smoke through the cigarette.

And they also did tests to look at the smoke to see if the smoke had anything in it that was from the filter, or the smoke looked anything different than smoke from other unfiltered cigarettes, and there were a number of different tests done. And all of the evidence you'll hear about these tests, for the most part, comes from Lorillard's files. There's some correspondence and some writings that describes all of these tests.

You'll hear about a man by the name of Killian. There will be some evidence about the Laboratory of Industrial Hygiene, abbreviated LIH. A man by the name of David Kendall, who had a consulting operation. The Armor Research Foundation, which is a part of the University of Illinois. Dr. Fulham you heard about, you'll hear about, and Ms. Revere.

And Dr. Killian did tests that determined that there was nothing in the smoke, no asbestos in the smoke, no silica in the smoke. In fact, Dr. Killian's tests suggested that the smoke from the cigarette was cleaner than the air you breathe. And as Ms. Chaber said, there will be

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testimony in this case about asbestos occurring in the air. It's a natural mineral. It's in air, it's in water, and there will be testimony about that.

We don't know much about the Laboratory of Industrial Hygiene, but the correspondence suggests that the results were negative, nothing in the smoke from the filter.

Dr. Kendall used a technique called infrared spectroscopy to determine whether or not there were any chemical fingerprints of asbestos, and he found no evidence of asbestos in the smoke. The Armor Research Foundation had an electron microscope. They looked at the smoke under an electron microscope. They found no asbestos in the smoke.

Dr. Fulham did two separate studies, one of which found no asbestos, and the other found what he described at the time as traces. And the correspondence that refers to Ms. Revere's test also describes this as traces. All of these tests show that there was either no asbestos in the smoke, or it was below the level of asbestos you would expect in the air and in the water.

And the tests that Dr. Fulham did, that you heard a little bit about with respect to Mr. Hallgren, involved cigarettes that were sent to him by Lorillard. He didn't go out and buy cigarettes and do tests. There's very little information about how those cigarettes were smoked or how they were examined or what kind of techniques were used in the Fulham laboratory.

The laboratory, at that time, was in the basement of Mr. Fulham's home, and he and Mr. Hallgren would work a

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couple nights a week looking at this under the microscope. And the evidence will be that they didn't run any blanks or any controls to see whether there was any asbestos in the air or in any of the building materials in the basement.

And there will also be evidence that these pictures, these photomicrographs that Mr. Hallgren has found, depict a number of other types of mineral fibers besides Crocidolite, something that wasn't -- mineral fibers that weren't in the filter.

There are tests that you can do today to look at something under a microscope and determine its chemical structure. You can differentiate between the Crocidolite fiber and chrysotile fiber and other types of asbestos fibers or other minerals. Those tests weren't routinely done in the '50s, and to the extent they were done, they found chrysotile in the fine fibers, not Crocidolite fibers.

Dr. Horowitz, as you heard, had cancer of the colon, had cancer of the prostate. And then when he was originally -- the colon cancer was something called adenocarcinoma of the colon. The prostate cancer was something called adenocarcinoma of the prostate. When he

first started having his lung problem, his doctors thought he had adenocarcinoma of the lung, which is something different than mesothelioma.

It was then determined that Dr. Horowitz had mesothelioma. That's what his treating physicians, people who were involved in his care and his treatment, decided. And they told him that mesothelioma can be caused by

exposure to asbestos. They asked him about asbestos, and the only thing he could recall was that he had some asbestos pipes in his basement in the home he lived in.

Eventually, Dr. Horowitz hired a lawyer and filed a lawsuit against manufacturers of asbestos products that he claimed he was exposed to in the Army on a troop ship, and in Cleveland and in Los Angeles while he was working as a psychologist. The claim in that lawsuit was that he was sitting in his office with the window open, and they were building a building across the street, and he might have been exposed to asbestos.

In connection with that lawsuit, Dr. Horowitz's lawyer sent him to Oakland to see a doctor by the name of Barry Horn. Dr. Horn asked Mr. Horowitz whether he ever smoked cigarettes. That's something that Dr. Horn asked all his patients. He's a pulmonologist. And Dr. Horowitz told Dr. Horn that he smoked cigarettes, and that he smoked Kent in the '50s, and that he recalled smoking -- starting to smoke Kent sometime after he moved to Cleveland, and he smoked Kent until the early '60s, when he quit smoking.

And he told Dr. Horn that the reason that he quit smoking was that because for the first time, he started to think that think that there might be something about smoking that wouldn't be good for him.

Dr. Horn is the first person who told Dr. Horowitz that there was asbestos in Kent cigarettes that were sold in the '50s. Dr. Horowitz has testified in his deposition that when he started smoking Kent cigarettes, the filter was a

solid blue, a pale blue, the color of his father's eyes, exactly what he said in his deposition.

He also testified that the color of the filter changed four years after he started smoking Kent cigarettes. And the color that the filter changed to those four years later was white. And that was the only change in the color of the filter that Mr. Horowitz could remember during the time he smoked Kent. He didn't recall the price going down. He didn't recall the composition of the filter material changing at all.

The evidence will be that when these cigarettes were sold in 1957 -- '56, end of '56 and beginning of '57, they were sold with a solid blue filter. And the color of that filter did change, and it changed in the early '60s. It changed to white.

Dr. Horowitz's testimony -- and there will be some other pieces of evidence that will bear on this issue that, by themselves, don't answer the question, but when you put them all together at the end of the case, I think will make it very clear that what Dr. Horowitz smoked was this cigarette.

He started smoking Kent sometime after 1956, after the price had dropped, after the blue filter was put on the cigarette, and he smoked it until sometime in the '60s, after the filter had changed to the color of white.

Finally, the evidence that you'll hear has to do with

cancer. For all that is known about cancer today, there is still a lot of things that medicine and science doesn't know

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about cancer.

Most cancers don't have a known cause. Some cancers have risk factors associated with them, things that had been demonstrated, in either experiments or in epidemiological studies, studies of groups of people, to increase the risk of developing certain things. But for the most part, most cancers don't have a known cause.

There is no cancer that has only one known cause. There may be a rare type of brain cancer that is only caused by one thing, but you'll hear from the plaintiffs' experts, as well as the defense experts, that there is no cancer that has only one known cause.

Mesothelioma behaves like many other cancers. There are other things that cause it besides asbestos. Occupational exposure to asbestos or exposure to asbestos in the same amounts, as would be encountered in the workplace, have been shown to cause mesothelioma.

There are cases of people who live near factories who are breathing a lot of asbestos everyday because of what's going on in the factory, or who live in towns where there are asbestos mines, or who do work with somebody who is working in an occupational situation coming home everyday with their clothes full of asbestos. There are cases reported like that.

But the vast majority of mesothelioma is caused by occupational exposure to asbestos. About 20 percent of mesothelioma in men, and up to a half in women, has no known cause. Doctors study the cases. They talk to the patients,

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they look at their medical records, they review their histories, and they can't find something, including asbestos, that might have caused that mesothelioma.

Mesothelioma occurs in animals, it occurs in children. It's reported in medical literature prior to the time there was industrial use of asbestos in this country. It is believed that heredity and genetics can cause mesothelioma.

There are doctors who believe that cancer has a genetic component. There's something about genes that don't work right or go wrong that create cancer. There are mesotheliomas known as idiopathic or spontaneous mesotheliomas. Those are mesotheliomas that occur without a doctor being able to determine what caused the cancer.

There is also increasing evidence to suggest, but not established, that there's a threshold level of exposure. For a while, when the risks of asbestos were first being studied, there was some thought that one exposure to one fiber of asbestos could cause cancer or other asbestos-related diseases. That's not generally accepted today as being correct.

And you'll hear some evidence about how medicine and science changed their thinking over time about things. They developed new ideas and they learned more as they study things. But there is asbestos everywhere. Everybody has asbestos in their lungs. You can do analysis of lung tissue from people who live in big cities and find asbestos in their lungs. Yet, mesothelioma is a very rare disease in the general population in people who weren't occupationally

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exposed to asbestos.

There have been researchers who have gone at the

question of threshold three different ways. One group has been to study all of the occupational people who develop mesothelioma and try to figure out how much asbestos they were being exposed to in the workplace. And to do that, they can measure the asbestos in the air and they express it in a phrase "fiber per cc." And what that is, is one fiber, one asbestos fiber in a cubic centimeter of air. And that's one way to measure it.

And they have a phrase called "a fiber year" that is something that is defined as exposure to one fiber per cc for one year of work. That's all day, every day, eight hours in a workday. And those researchers have determined that it takes five fiber years of exposure to asbestos to cause mesothelioma.

And you can express that -- you can do a calculation, and it turns into about 260 billion asbestos fibers of a certain size and a certain shape. And you'll hear a lot of testimony about that, too, because it's important to the ability of asbestos to cause disease. Only asbestos fibers of a certain size and a certain shape have the ability to get into the lung where they can cause mesothelioma.

And there's been a lot of research on that, there's been a lot of study of it, and it also is important, when you consider the evidence that you've heard about from Dr. Longo. I'll talk about that in just a second.

The other way you can do that, to try to figure out

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how much asbestos it takes to cause disease, is to look at something called fiber burden. And this is an analysis of lung tissue to see how much asbestos is in the lung.

And regardless of how you go at it -- and there are different types of researchers who do it different ways -- there are numbers, values, thresholds established. Exposure below the threshold isn't believed to cause disease; exposure above the threshold may or may not cause the disease, depending on the individual person, but you have to be exposed above the threshold before you're even at risk of developing disease.

And in this case, you'll hear some testimony about a Dr. Longo. What Dr. Longo did was take nine cigarettes from a 40-year-old pack of cigarettes that he had no idea where they had been in those 40 years, all he knows is that a cigarette pack collector, who was being paid as a consultant by the same lawyers who pay Dr. Longo, had a pack of cigarettes for a couple years that he collected.

They took those nine cigarettes and, after trying to smoke them on a smoking machine, decided to use a syringe. They took a drill and they drilled out the end of the syringe and put the cigarettes in the syringe, lit them, and pulled the plunger in the syringe in an effort to smoke them.

And Dr. Longo then looked at the smoke from inside those syringes under a microscope and counted the number of asbestos structures, not fibers, structures, that he found. And a structure is a bundle, or an aggregate, or a group of

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fibers.

And when did he that same thing with two other cigarettes only using a smoking machine -- Dr. Longo gave a deposition, and, in fact, I asked him about the cigarette smoking machine, the syringe he used, and whether that was really representative of the way people smoked, and he'll testify that that made him mad, and he wanted to prove that

his syringe was an accurate test.
And he went out and he took two more cigarettes that were 44-years-old that he didn't know anything more about than he knew about the other ones, put them in a machine this time, and then looked at the smoke and counted the number of structures he saw.
You're going to hear a lot of testimony about this, and this is all I want to say about it. He never did a test to figure out whether putting the cigarettes into the syringe -- and you'll see the videotape. It took a minute, minute-and-a-half, two minutes, sometimes, to put those cigarettes into those syringes -- never did a test to figure out whether that caused asbestos to be released from the filters.
When he did the test on the smoking machine, the numbers he got were one-fiftieth of what he got with the syringe. Without accounting for anything else, just using that same old cigarettes in the smoking machine, he got a lot of small numbers.
If you take his word and you leave aside all the other criticisms you might make about this test, it turns out the

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numbers he comes up with are one-two hundred fiftieth to one-one thousandth of this threshold.
If you accept Dr. Longo's numbers, smoking these 40-year-old cigarettes in his machine would expose -- would release asbestos at a level that if you smoked a pack a day for a year, you'd only get one-two hundred fiftieth to one-one thousandth of this threshold level of exposure necessary to cause mesothelioma.
One final point about cancer and mesothelioma. There are signs, or what doctors call markers of asbestos exposure in individuals. Things that a doctor can look at either on an x-ray or on a CT scan or in medical records and say: This person has been exposed to asbestos, without knowing anything about the person, without talking to the person.
You can take these records, you can put them in front of a doctor, you can put x-rays on a machine, turn on a light, and they can say: These markers, these signs, tell me that this person's been exposed to asbestos.
Asbestosis, the disease asbestosis, is one of these markers, something called bilateral pleural plaques; little callouses on the lung is another way to do it; pleural effusions are another; and analyzing lung tissue to see if there's more asbestos in the lung than you would expect to find there is another way for a doctor to do that.
In this case, Dr. Horowitz has none of those markers of asbestos exposure. If you took Dr. Horowitz's medical records and his x-rays and you put them in front of the doctors, the most they could say was: This man has

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mesothelioma.
They can't look at those records and look at those x-rays and say: This man has been exposed to asbestos. In fact, Dr. Hammar, who may testify tomorrow, will tell that you a pathologist can't ever look at a tumor and figure out what caused that tumor. But just by looking at the tumor, just by saying: This person has mesothelioma, that does not tell you what caused that particular cancer.
So I look forward to having an opportunity to put the evidence on for you and present this case, and I think that when the trial is over -- and I think it will be a shorter trial than we had anticipated, hopefully -- the evidence

will establish that using asbestos in 1950s was a good idea. It certainly wasn't a secret. And that the asbestos filter material was switched to nonasbestos filter material not because of any concern about the asbestos, but in an evident effort to improve the product, sell more cigarettes, which actually happened, and that Mr. Horowitz does not have mesothelioma caused by exposure to asbestos. Thank you.

THE COURT: Mr. Brake?

MR. BRAKE: Okay, Your Honor.

Your Honor, Counsel, and members of the jury: You may recall from yesterday that I'm Stephen Brake, and I represent Hollingsworth and Vose. With me is Cynthia Roenisch. Cynthia is from a San Francisco law firm Preuss, Walker & Shanagher. She also represents Hollingsworth & Vose. And my partner, Andrew McElaney, from Boston, will be here for most, if not all, of the trial.

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Hollingsworth and Vose is a paper company. It's not the type of paper company that owns forests and large pulp mills and makes writing paper, or anything like that. It makes scientific and technical papers, including some filter papers.

And back in the period '52 to '56, as you've heard, a subsidiary of Hollingsworth and Vose made the filter material that was sold to Lorillard and was used on the Kent cigarettes that had asbestos material. That filter material made by Hollingsworth and Vose had some amount of Crocidolite asbestos by design, and that's why Dr. Horowitz is claiming against Hollingsworth and Vose.

How did this paper come into being? As you know, we've got to go back in time in this case. We've got to go back to World War II. During the Second World War, it was learned that the Germans had very superior gas masks to the Allied forces, which was obviously of great concern.

As luck would have it, the British captured several gas masks, and they sent some to the United States to be analyzed and tested, and a joint project was begun by the Army Chemical Corps and the Naval Research Laboratory in Washington, D.C., in which they attempted to make the gas mask filter paper equal to or better than the German paper.

What they did was they took the German paper apart and they found it had Crocidolite asbestos, and they found it was a very, very efficient filtering agent. So efficient, it filtered out everything that came through it.

So what the Naval Research Lab did was it tried to

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find paper mills that could help it manufacture similar, if not better, paper. And there was a young research chemist at the lab named Harold Knudson. You heard about him during Ms. Chaber's presentation. He contacted Hollingsworth and Vose.

There were a lot of paper mills in New England at that time, and we were one of them. He developed a gas mask filter paper that filtered out everything that came through. After the war, Hollingsworth and Vose manufactured all the filter paper containing Crocidolite asbestos in the Army and the Navy.

During those years, the same paper had other applications. It was used, for instance, in the atomic energy plants to filter out radiation. It was used to filter hospital operating rooms. And, in fact, it was used by the Department of Defense to hang from planes in the upper atmosphere to detect radiation from Soviet bombs, and

that's how, in fact, they had a hydrogen bomb. All back in the '40s and '50s.

This was a military secret. In fact, it was classified information for some period of time. In 1951, it was declassified. It came to the attention of Lorillard, and Lorillard contacted Hollingsworth and Vose and asked whether the filter media could be modified for use in the cigarette.

This filter, as I've told you, filtered out everything that came through. In fact, it was called, as a result, an absolute filter. You couldn't put an absolute filter on a

cigarette, because all that would come through would be hot air, no tar and no smoke.

So what they did, they had to modify it to let some of the cigarette smoke through, and that's what they did. Research and development was done and by March, February of 1952, they were manufacturing the filter material. And they did that until not 1957, until May of 1956.

At that time Lorillard, called them and said: We found an alternate supplier, a different filter altogether, as you've heard, and they canceled the contact. And that was the ends of the business relationship between Hollingsworth and Vose and Lorillard.

So where does that bring us? Well, Dr. Horowitz says now that he smoked those cigarettes and they caused his disease. So let me take up the first points.

When the evidence will show you is that when Dr. Horowitz tells you he smoked Kent cigarettes before May of 1956, he is mistaken. Mr. Ohlemeyer laid that out for you in some detail, and I won't go back over it.

There will be a lot of different evidence and, in a way, it's a kind of a case within a case. You have to look at what Dr. Horowitz says, and you have to look at it carefully. You have to look at how he says it is and what he says, and you have to look in particular of how he describes the cigarettes and, in particular, how he anchors his memory.

I'm not going to lay it all out now, because he's going to take the stand, or he's going to testify, or we are

going to see his videotape and you'll see what I mean. Look at his testimony carefully and you will see that he is mistaken when he tells you he smoked Kent cigarettes.

Now, in this case, in addition, we are going to have a lot of expert testimony. We are going to have expert testimony, in particular, about the Kent cigarette, the filter and what, if anything, came out.

Plaintiffs told you about Dr. Longo. Dr. Longo's going to come, he's going to describe the two experiments to you, and what he did. As Mr. Ohlemeyer told you, he tested nine cigarettes in 1991. And he did not use, as has been conceded, standard protocol to do it. Ms. Chaber told you some of the reasons why Dr. Longo told you he did not use standard protocol. The evidence will show you the reason was he wanted to find a way to get asbestos out of those cigarettes.

Then what he did, after Mr. Ohlemeyer asked him some questions, Mr. Ohlemeyer said he got mad. And he got some more of the cigarettes, he found three more, and he tested those. And he tested one in January of '94 and two in September of '94, and in time to account for one criticism out of a whole abundance of criticisms.

To account for one criticism only, namely that he didn't use the standard smoking machine, he used the smoking machine the second time -- and you'll hear, by the way, all the criticisms of Dr. Longo's testimony when he takes the stand under cross-examination, principally by Mr. Ohlemeyer, but some by me.

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Now, what happened when Dr. Longo tested using the standard smoking machine was this. Mr. Ohlemeyer stole my thunder a little bit, but that's okay. The thing is, counsel for the plaintiff told you that when he did the second test, he had a little bit lower quantities of asbestos.

Well, he didn't, as you will see when you listen to the evidence, he didn't have a little bit lower. He had one-fiftieth of what he had the first time. That evidence and the rest of the cross-examination of Dr. Longo will show you that Dr. Longo's test is not a credible, scientific experiment on these cigarettes.

We are going to have an expert case, as well. We are going to call several experts in who studied asbestos for a very, very long time. It's going to be a joint experts case. I'm not going to call a separate set of experts. Mr. Ohlemeyer will call them, he'll examine them, and I may have a few questions.

I'd like you to understand, it's a joint case. They are my experts, as well. Just because I don't call them, I don't want -- don't misunderstand me. They are both of our experts, and those experts are going to address themselves to the question of could any asbestos that came out of that filter cause Dr. Horowitz's disease. It's a fundamental question in the case, and those experts are going to address it directly.

They are going to tell you two things. I'm not going to repeat what Mr. Ohlemeyer told you about thresholds, but

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they are going to tell you all about it. They are going to tell that you this one idea of one asbestos fiber, maybe sometimes when you got it, could give you mesothelioma is not scientifically correct.

They will tell you that all the evidence suggests that whether by fiber burden or by other analysis, looking at what has happened in the past, that there is a threshold below which you will not get mesothelioma. There may be some uncertainty about it as to the various ways you calculate it, but it is there.

And then they will tell you that no matter what you do with Dr. Longo's number, even if you believe Dr. Longo's numbers, he is below the threshold. And he's not a little below the threshold, he is way below the threshold. That evidence will prove to you that the Kent cigarette with the asbestos-containing filter did not, in any event, cause Dr. Horowitz's disease.

I wanted to touch on one other point, which is this idea that we are going to go back in time and we are going to look to see what was known about asbestos. Let me suggest to you that this is not an area where you can accept generalities. You have to look for specifics.

And when a witness takes the stand and he testifies about this area and he says: Oh, I think this was known, or I think that was known, look for the specifics. Because the specifics are, as Mr. Ohlemeyer alluded to, that asbestosis, a lung disease akin to coal miners' black lung disease -- a

long-term occupational exposure disease came to be known in
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the early decades of this Century, and it was studied because it came in certain places.

What happened, by the middle of the Century, people felt they knew what was a safe level of asbestos exposure. Not for people out in the atmosphere walking in the streets, they didn't concern themselves with that, and they didn't concern themselves with consumer products. They concerned themselves with what happened in asbestos textile mills, people handling raw asbestos and breathing uncontrolled emissions. By the end of the Century you will hear people felt, scientists felt, industrial hygienists felt they knew what was a safe level.

And they have a number called five million particles per cubic foot of air, and they came up with it, an organization that concerned itself with these things, and you'll hear about this, came up with this characterization in 1946, and they said two things. They said: We think this will protect workers if they are exposed at this level for their whole working lives, people working with asbestos, and we think this number is based upon the best available scientific evidence. But we are going to check it every year. At least, we are going to try to check it every year; some issue as to whether they did.

Do you know when they changed the number? They didn't change it in 1956. They didn't change it in 1966. They changed it in 1971 or 1972. Not until then did people finally come to the realization, frankly, that the number they adopted all those decades ago was wrong.
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And it took studies like Dr. Wagner's study in 1960. He connects mesothelioma to asbestos. Studies done in New York, published in New York in 1964 that showed shipyard workers were getting asbestosis. The number they came up with in 1946 was grossly wrong, and it took a long time to figure out. And all of this deals with people who were occupationally exposed to asbestos. So I ask you, when you listen to the evidence from what was known back then, don't accept generalities, look for the specifics.

Let me close up. I know you've listened to over two hours of closing arguments, so I'll wrap it up and make two points.

You've been told the plaintiff goes first, and listen to all the evidence, but it's terrifically important to do that, not least because we go second, and so I'd like you to listen to it before you consider the case as a whole, but I'd also like you to consider the fact that much of our evidence is going to come in during the plaintiffs' case, principally on cross-examination. When we get up to examine, we are making points that are directly important to our case.

Finally, let me point out to you that anyone can file a lawsuit if they feel they have been injured. And that's fair enough. That's the way it works.

MS. CHABER: I would object, Your Honor. I think we are in closing argument. I think Counsel didn't state that, and maybe he confused himself when he was doing that.

THE COURT: You're not supposed to put in argument,
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you're supposed to be talking about what you're going to prove.

MR. BRAKE: Thank you, Your Honor.

The fact of the matter is that we are here now and we are going to test this case in these next two weeks. Listen to the witnesses and to what the witnesses say -- not to pejorative characterizations -- to what the witnesses say.

At the end of the case, we will submit two propositions to you: Dr. Horowitz did not smoke Kent cigarettes before 1956, and the Kent cigarettes did not release sufficient asbestos to cause any harm to Dr. Horowitz. And on the basis of that, we will ask you to return a verdict in favor of Hollingsworth and Vose.

Thank you very much.

THE COURT: Thank you very much, Counsel.

Ladies and gentlemen, those are the opening statements, and we will now take the evening recess until tomorrow morning at 9:00 o'clock.

Please bear in mind the fact that you are not to discuss the case, either amongst yourselves or with anyone else. If anyone attempts to discuss the case with you, please advise the Court of that fact.

Also, you are not to look for anything in connection with this case or talk to anybody about it or ask any questions or read anything or look at any pictures or do any kind of an investigation in any way whatsoever connected with this case.

You may leave your notebooks right on your chairs

there, and they will be there tomorrow morning. Please come back tomorrow morning at 9:00 o'clock. See you then.

(Whereupon, court was in recess.)